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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/725,355

Filing Date: December 01, 2003

Appellant(s): SEYMOUR ET AL.

Scott C. Mayhew
For Appellant

EXAMINER'S ANSWER

This is in response to the Supplemental Appeal Brief filed 7/25/2008 appealing from the Office action mailed 11/08/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct. However, the additional citations below are provided for clarification.

The element numbers in the descriptions refer to Figures 1 and 2.

At the end of the first sentence in the description of each independent claim, include the reference (p 4, line 30 to p 5, line 2).

On page 3, in the description of Claim 10, add the reference (p 4, lines 3-19).

On pages 3-4, in the description of Claim 18, add the reference (p 4, lines 20-29).

On pages 4-5, in the description of Claim 28, add the reference (p 4, line 30 to p 5, line 12).

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relyed Upon

5966218	Bokelman et al	10-1999
3032245	George et al	5-1962
20040122547	Seymour et al	6-2004
20040187560	Cholet	9-2004
WO 03/019132	Cholet	3-2003

Certified Translation of WO 03/019132, Schreiber Translations, Inc. 12-2007.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Note: US 2004/0187560 to Cholet are in the same patent family as WO 03/019132 and has previously been used as an English translation thereof. A certified translation has now been received and is included and referenced herein. For each reference to Cholet, the original citation to US 2004/0187560 is given first, followed by the corresponding citation from the certified translation (CT).

Claims 1-3, 5-6, 8-12, 14-15, 17-19, 22-23, 25-29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bokelman et al (5966218) in view of Cholet (WO 03/019132 A1, US 2004/0187560 and the newly obtained certified translation used for English translation) and further in view of Seymour et al (US 2004/0122547).

Claims 1-2, 4-6, 8, 18-19, 21-23, 25-26 and 28-31: Bokelman et al teaches that it is known to inspect a banded cigarette paper, which comprises a repeating pattern of first and second bands, by unwinding it from a first bobbin, inspecting the paper between bobbins, and rewinding the paper onto a second bobbin. Bokelman et al discloses a procedure and apparatus for examining banded cigarette wrapping paper. The paper is unwound from a first bobbin and wound onto a second (rewind) bobbin. One or more inspection stations (testing device or pattern detection device) can be used between the bobbins to determine properties of the paper. In particular, the band pattern on the paper is detected by one of the inspection stations via analysis of reflections from an elongated beam of light directed onto the paper (Abs; col 1, lines 5-17; col 2, lines 38-43). The band or pattern detection device is thus configured to receive the paper unwound from the first bobbin. The pattern detection device communicates with a remote computer, thus generates a signal in response to the analysis that is analyzed to determine the spacing, width and average contrast of the bands (col 2, lines 54-59). A magnetic braking device cooperates with the first bobbin to control the tension in the paper (col 4, lines 27-33). The paper is wound onto the second bobbin by using a drive wheel to induce rotation of the second bobbin through frictional contact (col 5, lines 1-8).

Bokelman et al does not disclose that a testing device for nondestructively measuring a material property or that the pattern detection device and testing device are in communication with one another. Bokelman et al also does not disclose stopping the paper at selected positions so that individual bands could be tested.

Cholet discloses an automated testing apparatus and method for determining the permeability of a porous material having alternating porosity levels. The porous material can be a cigarette wrapping paper with bands of alternating porosity and the testing can be performed on an individual band. The measurement of permeability is revealed by Cholet as an important parameter in paper strips having alternating layers of porosity (p 1, pars 1-4)(CT- all of p 3 to p 4, line 17). The measurement apparatus comprises two chambers that engage at opposite sides of a sample paper and define a sample area that is smaller than the dimensions of the bands in the paper (p 1, pars 3-6; p 2, par 30)(CT-p 3, last 2 lines to bottom of p 4). The testing process is automated, with an advancement device (stepping motor and drive rollers) advancing the paper and the testing device actuated while the paper is stopped after each advancement to make a measurement. Based on a first series of measurements, the pattern of bands on the paper is calculated, thus the device is a pattern or band detection device. An attached processor performs the calculations and controls the future actions of the stepper motor and the measurement device during additional testing (p 1, pars 10-14; p 2, pars 31-44; Claim 7)(CT-p 5, line 12 to p 6, line 8).

Cholet does not disclose controlling the measurements using signals from a pattern detection device.

Seymour et al discloses a method for manufacturing cigarettes having banded paper comprising measuring the location of a band 1507 on paper web 55 with a band detector 95 (pattern detector), which generates a signal 1530 that is processed by a servo controller 1525, the servo controller directing the applicator 70, a flying knife

cutter 1568 and the speed of the machine to provide correct registration of the bands (Fig. 15; p 19, pars 138-140). It was thus known to those of ordinary skill in the art at the time of the invention to use band detection devices to send signals to control other related processes that depend on the position of the bands.

The art of Bokelman et al, Cholet, Seymour et al and the instant invention is analogous as pertaining to the measurement of properties of banded cigarette paper. It would have been obvious to one of ordinary skill in the art to include automated permeability testing using a controller to detect signals from the pattern detection device and to control the paper advancement (drive) device and direct permeability testing in the inspection device of Bokelman et al in view of Cholet and further in view of Seymour et al to provide additional important data with less expenditure of time or money. It would also have been obvious to stop the paper at selected positions so that individual bands could be tested. Contemporaneous control would have been obvious to ensure accurate and efficient measurements. The motivation would have been to provide additional important data with less expenditure of time or money. The band detection and computation procedure of Cholet would not have been necessary with the combination of Bokelman and Cholet due to the band detection device of Bokelman, again saving time and cost.

Claims 3, 9-15, 17 and 27: Bokelman et al does not disclose that the second bobbin can be used on a cigarette manufacturing device or that the paper examining apparatus and a cigarette manufacturing device can be used together as system.

Bokelman et al also does not disclose that the bobbins are interchangeable or that they are adapted to be used on a cigarette manufacturing device.

Bokelman et al teaches that many bobbins of paper must be inspected in a day, thus speed is a significant factor (col 1, lines 15-39). Bokelman et al also discloses that the bobbins are easily and quickly mounted and removed (col 2, lines 34-37). While the use of interchangeable first and second bobbins is not explicitly disclosed by Bokelman et al, it would have been within the general skill of one of ordinary skill in the art to use the same kind of bobbins for both first and second bobbins and to use bobbins that are directly usable on a cigarette manufacturing device to eliminate the need for an additional costly step of rewinding the paper onto a suitable bobbin. It would further have been obvious to use the examined paper on a cigarette manufacturing device, thus establishing a system comprising a cigarette manufacturing device and cigarette paper testing apparatus. It would have been obvious, after removing the fully rewound second bobbin, to replace it with the empty first bobbin to receive the next supply of tested paper.

Claims 7, 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bokelman et al in view of Cholet and further in view of Seymour et al and George et al (3032245).

Bokelman et al, Cholet and Seymour et al do not disclose a tension control device comprising a paper engaging member between the first and second bobbins.

George et al disclose a variety of methods used to control tension in a moving web of paper (col 1, lines 9-17). The methods include a belt contacting the supply wheel (brake), spring controlled rollers that contact (operably engage) the web, and a vacuum box, across which the web travels (and operably engages) (col 2, lines 36-51).

The art of Bokelman et al, Cholet, George et al and the instant invention are analogous as solving the problem of controlling of tension in a moving band of paper. It would have been obvious to one of ordinary skill in the art to use one or more of the claimed tension controlling devices in the inspection device of Bokelman et al in view of Cholet and further in view of Seymour et al and George et al as a functionally equivalent option.

(10) Response to Argument

Regarding the individual references, Applicant argues that Bokelman et al only discloses inspection stations that measure the spacing, width and contrast of the bands, and does not teach or suggest generating a band detection signal that contemporaneously triggers a testing device to measure a porosity or basis weight of a band. Applicant further argues that Cholet teaches that, because the bands cannot be distinguished visually, the only option for positioning strips (detecting band locations) is to measure the permeability of the strips point by point. Applicant also argues that, in Cholet, detection of the bands and later (not contemporaneous) measurement of the porosity of the bands are conducted by the same device rather than using two separate devices as claimed. With regard to Seymour et al, applicant argues that the reference is in the context of a cigarette manufacturing device and is not relevant to the claimed

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testing device. Applicant argues that George et al does not address the noted distinctions with reference to the other cited art.

Regarding the combination of references, Applicant argues that such a broad motivation as saving time and money, which is common to any process, does not provide an objective reason to combine the teachings of the references and that impermissible hindsight was used to reject the claims. Applicant suggests that the Office Action has "simply retraced the path of the Applicants with hindsight, discounted the number and complexity of the alternatives that would have been possible for simply saving time and/or money ... and concluded that the invention as claimed was obvious." (p 11, 1st par). Applicant further argues that Cholet teaches away from combination with Bokelman et al and would only complicate the device of Bokelman et al by providing a redundant measure of the properties of the paper.

Saving time and money are powerful and universal motivators for making changes to a process or apparatus. "It should be too well settled now to require citation or discussion that the test for combining references is not what the individual references themselves suggest but rather what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper." In re McLaughlin, 443 F.2d

1392, 1395, 170 USPQ 209, 212 (CCPA 1971). The following discussion provides ties between the references that provide the motivation to combine them as suggested.

Bokelman et al, Cholet and Seymour et al each measure the position of bands in banded paper. Bokelman et al teaches that the bands formed on cigarette paper often have reflective properties similar to the cigarette paper itself and are difficult to distinguish from the cigarette paper because both are the same color (col 1, lines 54-58). Thus Bokelman et al teaches, as does Cholet, that the bands are at least difficult to distinguish visually. Bokelman discloses an alternative to the method of Cholet for measuring the location of the bands. Bokelman et al suggests that multiple inspection stations (testing devices) that analyze properties of the paper between the bobbins (col 2, lines 38-43). The multiple inspection stations are necessarily serially disposed or, at least, such would have been obvious to one of ordinary skill in the art. Given the importance of the measurement of porosity in such papers, it would have been obvious to one of ordinary skill in the art to include a device for measuring porosity, such as that of Cholet, for one of the inspection stations in Bokelman et al. The motivation would have been to obtain multiple needed properties of the cigarette paper in one pass, thus saving time and money.

Cholet et al teaches that knowledge of the band locations is required for directing correct advancement and positioning of the paper, stopping at each band and measurement of porosity. The method is nondestructive. Since the device of Bokelman et al detects the location of the bands, it would have been obvious to one of ordinary

skill in the art to omit the detection procedure of Cholet as unnecessary and use the device of Cholet for the second porosity measurement step.

Seymour et al solves the problem of measuring the location of bands in banded cigarette paper and using the measurement to generate a signal to contemporaneously control further process steps related to or dependent on the locations of the bands. Using the result of a measurement to control a process related to that measurement was within the level of ordinary skill at the time the claimed invention. The porosity measurement of Cholet requires a signal resulting from the knowledge of the band locations to position the paper and conduct the measurements. It would have been obvious to one of ordinary skill in the art to use the band detection station to generate a signal to control incremental advancement of the paper and the contemporaneous nondestructive measurement of porosity in the inspection process and apparatus of Bokelman et al in view of Cholet and further in view of Seymour et al. The motivation is the same as previously discussed and one skilled in the art at the time of the invention could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Dennis Cordray/

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Examiner, Art Unit 1791

Conferees:

/Steven P. Griffin/

Supervisory Patent Examiner, Art Unit 1791

/Jennifer Michener/

QAS, TC1700